IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2007

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

and

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Writ Appeal No.1801 of 2000

1. State of Tamil Nadu, rep.by
   Secretary to Government
   Commercial Taxes and
   Religious Endowment
   Department, Fort St.George
   Madras - 9

2.The Assistant Commissioner
  Commercial Taxes)
  Vellore Commercial Taxes District
  Vellore, North Arcot District.

3.The Entertainment Tax Officer
   Vellore (South)
   Vellore, Nort Arcot District. Appellants

v.

Apsara Theatre
Vellore
North Arcot District
rep.by its Licensee Respondent

Writ Appeal filed under clause 15 of the Letters Patent against the order dated 15.04.1999 made in writ petition No.17151 of 1990. This petition presented to this Court under Article 226 of constitution of India to issue a writ of certiorari calling for the records of the 2nd respondent made in AP.No.14/88-89 dated 21.9.89 and the quash the same.

For Appellants : Mr.Haza Nazirudeen
Spl.G.P.(Taxes)

For Respondent : No Appearance

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JUDGMENT

(Judgment of the Court was delivered by
K.RAVIRAJA PANDIAN, J.)

The writ appeal is filed against the order dated 15.4.1999 made in W.P.No.17151 of 1990, wherein the respondent herein - the Apsara Theatre, Vellore sought for the relief of issuance of writ of certiorari calling for the records of the Assistant Commissioner, Commercial Taxes, Vellore, the second appellant herein, dated 21.9.1989 made in A.P.No.14/88-89 and quash the same.

2. The precise facts of the case were that the respondent was a proprietor of the Cinema theatre and was paying entertainment tax as per the Tamil Nadu Entertainments Tax Act, 1939. Under Section 4(1) of the Act, the respondent was charging Rs.2.90ps as the rate for admission to First Class. On the respondent making an application for revision of rate of admission, the licensing authority -District Collector, North Arcot District permitted the petitioner to increase the rate of admission to Rs.3/- by his proceedings dated 18.1.1985. Accordingly, the Entertainment Tax Officer - appellant No.3 herein fixed the rate of entertainment tax and surcharge on entertainment tax at the rate of Rs.3.00 as follows:

Net price for admission	: Rs.1.56
Entertainment tax	: Rs.0.52
Surcharge on entertainment tax	: Rs.0.52
Additional surcharge on entertainment tax	: Rs.0.40
Total	: Rs.3.00

Subsequently, the Entertainment Tax Officer - appellant No.3 herein on the view that the net price of admission was more than Rs.1.50, the entertainment tax should be fixed at 2/5th of the net amount, calculated the rate of tax, surcharge at the rate of 2/5th of the net amount as under:

Net price for admission	: Rs.1.56
Entertainment tax	: Rs.0.62
Surcharge on entertainment tax	: Rs.0.62
Additional surcharge on entertainment tax	: Rs.0.40

In view of the revision of the tax component, the Entertainment Tax Officer made a re-assessment under Section 7B(2) of the Entertainments Tax Act for the period from 12.4.1985 to 7.10.1085 and demanded a sum of Rs.8750.80 towards entertainment tax and a likesum towards surcharge on entertainment tax by his order dated 28.12.1988. Against the said order, the respondent filed an appeal in A.P.No.14/88-89 before the Assistant Commissioner of Commercial Taxes, Vellore, the second appellant herein, who by his order dated 21.9.1989 dismissed the appeal on the ground that it was for the respondent/proprietor to collect the correct amount of entertainment tax and surcharge on entertainment tax as per the provisions of Entertainments Tax Act. Since the respondent failed to

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collect the correct amount of tax, as per the statutory provision, the respondent has to make good the short levy from out of his own funds. The respondent challenged the said order of the Assistant Commissioner dated 21.9.1989 made in A.P.No.14/88-89 dated 21.9.1989 by filing writ petition.

3. Learned single Judge after taking note of Section 4, as it was obtaining during the relevant period of time, has rendered a finding to the effect that the said Section was not happily worded. The operation of the proviso has given innumerable difficulties and the instant case was one of the typical illustration for the difficulty that has arisen. The learned Judge after taking into consideration of the entire provisions of Section 4 along with the proviso, has found that the original rates approved by the Entertainments Tax Officer were correct and the revision made by the Entertainment Tax Officer subsequently, which was affirmed by the Assistant Commissioner of Commercial Taxes, could not be regarded as correct. The correctness of the said order is now canvassed in this writ appeal.

4. The learned Government Pleader appearing for the revenue has submitted that on a correct reading of the statutory provision, Section 4(1), particularly, clause (iii) of sub-section (1), which provides that if the payment inclusive of the amount of tax is more than Rs.1.50ps, the entertainment tax payable would be 2/5th of the amount and the 2/5th of the amount represents only Rs.0.62ps and hence the revision is in accordance with law.

5. We are not able to countenance the argument of the learned Government Pleader. Section 4(1) of the Entertainments Tax Act, which was obtaining during the relevant period is as follows:

> "4. Tax on payment of admission to entertainments. - (i) On each payment for admission to any entertainment, there shall be levied and paid to the State Government (except as otherwise expressly provided in this Act), a tax (hereinafter referred to as the entertainment tax) calculated at the following rates, namely: -
>
> | Where such payment (inclusive of the amount of the tax) - | | |
> |---|---|---|
> | (i) is not more than thirty paise | - | one-fourth of such payment |
> | (ii) is more than thirty paise but is not more than one rupees and fifty paise | - | one-third of such payment. |
> | (iii) is more than one rupee and fifty paise | - | Two-fifths of such payment. |
>
> Provided that in the case of cinematograph exhibitions, the tax shall be calculated at the rates specified above on each payment for admission, after excluding such payment, the amount of the tax."

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6. From a reading of the entire provision Section 4 with the proviso, it could be discernible that for the purpose of Cinematograph exhibition, the tax should be calculated at the rate specified in the main provision after excluding from such payment the amount of tax. From which, it is clear that where the net payment exceeds Rs.1.50 (in this case, Rs.1.56), the tax shall be calculated first on the net sum of Rs.1.50 at 1/3rd of said sum. Thereafter, on the excess sum over and above Rs.1.50, the tax has to be calculated at 2/5th. If the above working method is adopted for the admission rate of Rs.1.50, and the tax is charged at 1/3rd, the tax amount would be Rs.0.50ps. On the balance of Rs.0.06 paise, which is over and above Rs.1.50, the tax would be 0.02.4 paise which could be rounded off to Rs.0.02 paise. When added with tax amount of Rs.0.50 on Rs.1.50, the total entertainment tax would be 0.52, the equal amount of Rs.0.52 paise surcharge and additional surcharge 0.40 is added, the total amount fixed for admission would come to Rs.3.00.

7. If the argument of the learned Government Pleader that the amount is more than Rs.1.50ps, the tax should be 2/5th of such amount, is taken in an abstract manner and calculated at Rs.0.62ps., the total, which include admission rate, entertainment tax, surcharge on entertainment tax, additional surcharge would come to Rs.3.20ps.,which is not the price fixed by the licensing authority. Hence, the only plausible method of calculation is the method by which the Entertainment Tax Officer calculated the amount by his proceedings dated 8.1.1985.

8. Further, it is contended by the respondent that as per the provisions of the Entertainment Tax Act and Rules, the collection of tax has to be approved by the authorities, which approval is authenticated by affixing the seal. Hence, the collection made by the respondent is only as per the fixation of the tax by the Entertainment Tax Officer. The respondent should not be faulted for the mistake, if any, committed by the Department. Even otherwise, it is the contention of the respondent that the tax, surcharge and additional surcharge fixed by the Entertainment Tax Officer prior to revision was correct and is in accordance with the statutory provision. We also approve the contention for the reasons stated supra.

9. The learned Government Pleader on instructions submitted that the instant case is the only case of this nature. The increase of rate at Rs.0.10 and fixation of rate at Rs.1.56 is the cause for such confusion.

10. From the above and also taking note of the fact that the Section has been amended from 1989 onwards, the only way of interpretation which gives life to the provision is as stated above and as done by the learned single Judge. The interpretation sought by the revenue is not only against the provision but defeat the workability of the very provision.

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14. The learned Judge in paragraph No.4 of the order elaborately discussed the fallacy or the incongruity of the revised calculation made by the Entertainment Tax Officer by demonstrating the working method of entertainment tax on the rate of admission prevailing prior to the raise by Rs.0.10. Thus, the subsequent revision is not in accordance with the statutory provisions. Hence, the order of the Entertainment Tax Officer revising the rate and demanding a sum of Rs.8750.80ps towards the entertainment tax and equal amount of Rs.8,750.80ps towards surcharge on entertainment tax and the order of the Appellate Authority in A.P.No.14/88-89 dated 21.9.1989 confirming the order of assessment cannot be legally sustainable and the order of the learned single Judge is in conformity with the statutory provision, and based on more plausible interpretation, which requires no interference in this appeal and the appeal is therefore dismissed. However, there is no order as to costs.

usk

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1.Secretary to Government
Commercial Taxes and
Religious Endowment
Department, State of Tamil Nadu
Fort St.George, Madras - 9

2.The Assistant Commissioner
Commercial Taxes)
Vellore Commercial Taxes District
Vellore, North Arcot District.

3.The Entertainment Tax Officer
Vellore (South)
Vellore, Nort Arcot District

+1 cc to Speicial Government Pleader Sr.No.44053.

AKR(CO)
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